



TOWN OF UNDERHILL

Development Review Board

CHRIS WELLS & HEIDI MCCLAUGHLIN
CONDITIONAL USE: WAIVER REQUEST HEARING
Docket #: DRB-19-05

Applicant(s):	Chris Wells & Heidi McLaughlin
Consultant:	Chris Wells
Property Location:	28 Range Road (RA028)
Acreage:	± 0.50 Acres
Zoning District(s):	Rural Residential
Project Information:	<p>Background: In 2018, the applicants submitted a development review application (DRB Docket #: DRB-18-08) to demolish the then existing single-family dwelling to allow for the construction of another single-family dwelling in the same footprint, only as part of the reconstruction process, what was once an existing deck/porch would be converted into existing living space. Since the converted space was located within the property's setback (side & rear) requirements, a dimensional waiver was required, and subsequently approved.</p> <p>Proposal: The applicants are now requesting a dimensional waiver to construct a utility room and porch onto the previously reviewed and approved dwelling proposal. The applicants are proposing to build the currently unapproved utility room in the property's rear setback.</p>

2018 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:

- Article II, Table 2.3 – Rural Residential (pg. 15)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.8 – Nonconforming Lots (pg. 39)
- Article III, Section 3.9 – Nonconforming Structures (pg. 40)
- Article III, Section 3.11 – Outdoor Lighting (pg. 41)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 44)
- Article III, Section 3.14 – Performance Standards (pg. 46)
- Article III, Section 3.17 – Source Protection Areas (pg. 55)
- Article III, Section 3.18 – Steep Slopes (pg. 56)
- Article III, Section 3.19 – Surface Waters & Wetlands (pg. 63)
- Article III, Section 3.23 – Water Supply & Wastewater Systems (pg. 68)
- Article V, Section 5.1 – Applicability (pg. 112)

- Article V, Section 5.3 – Site Plan Review (pg. 115)
- Article V, Section 5.4 – Conditional Use Review (pg. 120)
- Article V, Section 5.5 – Waivers & Variances (pg. 123)
- Article VI – Flood Hazard Area Review (pg. 127)
- Appendix A – *Underhill Road, Driveway, Trail Ordinance*

CONTENTS:

- a. Exhibit A - Wells/McLaughlin Conditional Use Review Staff Report
- b. Exhibit B - Wells/McLaughlin (RA028) Conditional Use Review Hearing Procedures
- c. Exhibit C - Development Review Application
- d. Exhibit D - Responses to Development Review Application Questions
- e. Exhibit E - Zoning Permit Application (B-19-13)
- f. Exhibit F - Notice to BFP
- g. Exhibit G - Certificate of Service
- h. Exhibit H - Floor Plan
- i. Exhibit I - Wastewater System & Potable Water Supply Permit (WW-4-5222)
- j. Exhibit J - Site Plan
- k. Exhibit K - Wastewater System Details
- l. Exhibit L - Site Plan with Waiver & Variance Limitations
- m. Exhibit M - Site Plan with Proposed Additions & Limitations

COMMENTS/QUESTIONS

1. **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS:** A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1).
2. **SECTION 3.8 – NONCONFORMING LOTS:** The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
3. **SECTION 3.11 – OUTDOOR LIGHTING:** The Board typically requires that if new lighting is installed, it shall be downcast and shielded.
4. **SECTION 5.3.B.6 – LANDSCAPING & SCREENING:** The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.
5. **SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL:** The Board typically requires as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.
6. **SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST:** A waiver may be approved in four situations. The proposed project seemingly qualifies under two of the four situations below:
 - a. To allow for the reasonable development and use of a pre-existing nonconforming lot.
 - b. To allow for additions or improvements to a pre-existing nonconforming structure.
7. **SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS:** The Board shall find that the proposed project satisfies four elements prior to issuing a waiver. When reviewing the four elements, the Board should take note of the following elements as it relates to the project:

- a. *Element 1* – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.
 - b. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.
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STAFF FINDINGS OF RELEVANT SECTIONS

ARTICLE II – ZONING DISTRICTS

	Rural Residential		Previously Proposed Single-Family Dwelling	Proposed Deck and Utility Room
Lot Size:	3.0 Acres		0.50 Acres	
Frontage:	250 ft.		~126 ft.	
Setbacks:	Principal	Accessory	Source: Site Plan (Exhibit L)	
• Front East	30 ft.	0 ft.	>30 ft.	>30 ft.
• Side 1 North	50 ft.	20 ft.	68 ft.	56 ft.
• Side 2 South	50 ft.	20 ft.	~32 ft.	78 ft.
• Rear West	50 ft.	20 ft.	~38 ft.	47 ft.
Max. Building Coverage:	25%		Assumed Met	
Max. Lot Coverage:	50%		Assumed Met	
Maximum Height:	35 ft.		Assumed Met	

TABLE 2.3 – RURAL RESIDENTIAL DISTRICT

PG. 15

Purpose Statement: The purpose of the Rural Residential District is to accommodate medium density development on land that has access to public roads where traditional development has taken place, where soil cover is thicker than on the hillside. The Rural Residential district allows for the continuation of existing commercial, residential, and public uses and to encourage future development, particularly along Route 15, Poker Hill Road and Irish Settlement Road that is compatible with these historic uses.

- The proposed utility room will be an auxiliary room to a single-family dwelling, and conforms to the medium development along Range Road, a public road.
- The existing lot does not conform to the lot size requirement, and is therefore, a preexisting nonconforming lot (see Section 3.8, Nonconforming Lots below).
- The previously approved dwelling, and now proposed utility room, will not satisfy the west, rear property setback requirement, and is therefore, nonconforming (see Section 3.9, Nonconforming Structures below).
- The proposed project (deck and utility room) does not satisfy the west, rear setback requirement (see Table above), thus requiring a setback waiver.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS

PG. 30

- The subject lot has access to Range Road, a Class III Town Highway.
- While the lot is nonconforming, no modifications to the existing access way are being proposed, nor does the proposed project require modifications to the existing access way.
 - *Note:* The nearest part of the driveway is ~ 6 ft. from the south, side property line, and therefore, pre-existing nonconforming.
 - *Note:* The Board has authority to require the applicants to relocated the existing access way if necessary per Section 3.2.D.4. Any relocation of the access way requires an access permit.
- In regards to § 3.2.C.3, requiring an access permit for this project proposal is unnecessary.

- Since no modifications are being made to the existing driveway, review of § 3.2.D is unnecessary.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

PG. 38

- The proposed utility room will be attached to the single-family dwelling, the only principal structure/use on the lot.
- The proposed utility room will not satisfy the west, rear property setback requirement, and therefore, a dimensional waiver is required.
 - A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1)
 - *Note:* Prior to demolition, the then existing single-family dwelling was pre-existing and nonconforming. The Board approved the previous application (DRB-18-08) that allowed for the reconstruction of the pre-existing, nonconforming dwelling, as well as allowed for the expansion of the nonconformity (the conversion of the then deck/porch to additional living space).

SECTION 3.8 – NONCONFORMING LOTS

PG. 39

- The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
 - Due to several site constraints, such as an undersized lot and the proposed septic system, the ability to construct a conforming structure is limited.

SECTION 3.9 – NONCONFORMING STRUCTURES

PG. 40

- The approved single-family dwelling (under DRB Application #: DRB-18-08) will remain a nonconforming structure since the Board permit the reconstruction of a single-family on the same footprint as the previous existing nonconforming single-family dwelling..
- Typically, nonconforming structures cannot be expanded; however, the Board may grant a dimensional waiver to expand a nonconforming structure in accordance with Article V.

SECTION 3.11 – OUTDOOR LIGHTING

PG. 41

- No new lighting is proposed (see Exhibit D).
- The Board typically requires that if new lighting is installed, it shall be downcast and shielded.

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

PG. 44

- The proposed deck and utility room does not increase the number of parking spaces that are required for the existing uses on the property – a single-family dwelling (two parking spaces).

SECTION 3.14 – PERFORMANCE STANDARDS

PG. 46

- The proposed deck and utility room is not anticipated to create any of the situations/circumstances enumerated within this Section (specifically § 3.14.B).

SECTION 3.17 – SOURCE PROTECTION AREAS

PG. 55

- The subject lot is located entirely within the Groundwater Source Protection Area.
- The project is exempt from review under Section 3.17.B since it relates to a single-family dwelling.



SECTION 3.18 – STEEP SLOPES

PG. 56

- The ANR Atlas does not depict any areas of steep slopes (15%-25%) or very steep slopes (>25%) in the project area (see directly to the right).



SECTION 3.19 – SURFACE WATERS & WETLANDS

PG. 63

- The ANR Atlas does not depict any surface waters or wetlands on the property.

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

PG. 68

- A wastewater permit is not required for the proposed project.
- The applicants obtained a wastewater permit (Permit #: WW-4-5222) for the anticipated reconstruction of a two-bedroom, single-family dwelling (see Exhibit I), issued on May 20, 2019.

ARTICLE V – DEVELOPMENT REVIEW

SECTION 5.1 – APPLICABILITY

SECTION 5.1.A – TYPE OF REVIEW REQUIRED

PG. 112

- Conditional use review is required in accordance with Sections 3.7.E.1 and 3.9.

SECTION 5.1.B – COORDINATION OF REVIEW

PG. 112

- Does not apply.

SECTION 5.3 – SITE PLAN REVIEW

SECTION 5.3.A – PURPOSE

PG. 115

- Site plan review is required per § 5.4.C when reviewing a conditional use review application.

SECTION 5.3.B – STANDARDS *(the Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:)*

SECTION 5.3.B.1 – EXISTING SITE FEATURES

PG. 115

- The proposed deck and utility room appears to avoid, or conforms with the requirements pertaining to the resources identified under Section 5.3.A.1.
- Should the Board discover any of the resources identified under Section 5.3.A.1, they have the ability to require one or more of the mitigation techniques:
 - Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
 - The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
 - Permanent protection of identified resource areas as designated open space.
 - The screening of development as viewed from public vantage points.
 - The preparation and implementation of management plans for identified resources.

SECTION 5.3.B.2 – SITE LAYOUT & DESIGN

PG. 115

Rural Residential and Water Conservation Districts. Site design and layout shall reinforce the rural character and traditional working landscape of these districts, characterized by wooded hillsides, open fields, and a visual and functional relationship of structures to the surrounding landscape. Buildings shall be sited to minimize, to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and be oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within these districts.

- The proposed deck and utility room, to be attached to the single-family dwelling, is consistent with the rural character of the area and traditional working landscape of the Rural Residential District.
- The proposed utility room appears to conform with the characteristics described.

SECTION 5.3.B.3 – VEHICLE ACCESS

PG. 116

- The property is currently accessed by one curb-cut via Range Road.
 - No modifications to the existing curb-cut or driveway are anticipated.

SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS

PG. 117

- See Section 3.13 above.

SECTION 5.3.B.5 – SITE CIRCULATION

PG. 117

- Site circulation is expected to continue being consistent with site circulation patterns associated with single-family dwellings.

SECTION 5.3.B.6 – LANDSCAPING & SCREENING

PG. 118

- No modifications to landscaping and screening are proposed.
- The proposed utility room will be located on the side of single-family dwelling, and will be visible from Range Road.
 - The construction of the utility room will be consistent with similarly approved additions and will conform with the proposed single-family dwelling.
- The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.

SECTION 5.3.B.7 – OUTDOOR LIGHTING

PG. 119

- See Section 3.11 above.

SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL

PG. 119

- The Board typically requires as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.

SECTION 5.4 – CONDITIONAL USE REVIEW

SECTION 5.4.A – PURPOSE *(the standards and conditions should relate to the identification, avoidance and/or mitigation of potential impacts:)*

PG. 120

- Board approval is required for development that is proposed to occur in the property's setbacks per Sections 3.7.E.1 and 3.9.

SECTION 5.4.B – GENERAL STANDARDS

SECTION 5.4.B.1 – THE CAPACITY OF EXISTING OR PLANNING COMMUNITY SERVICES OR FACILITIES **PG. 121**

- The construction of the proposed utility room is not anticipated to have an adverse impact on the existing or planning community services or facilities.
- Staff did not solicit input from UJFD or MMU.

SECTION 5.4.B.2 – THE CHARACTER OF THE AREA AFFECTED **PG. 121**

- The construction of the proposed utility room is not anticipated to have an adverse impact on the character of the area, as the single-family dwelling and proposed utility room conform with other development in the area – single-family dwellings.
 - **Location:** the property is located in the Rural Residential District, specifically in an area where the large majority of the development is single-family dwellings.
 - **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
 - **Type:** the proposed deck and utility room will be attached to the single-family dwelling, a permitted use in the Rural Residential District..
 - **Density:** the proposed utility room will not increase the density in the area affected.
 - **Intensity:** the proposed deck and utility room will negligibly change the intensity of the area affected.

SECTION 5.4.B.3 – TRAFFIC ON ROADS & HIGHWAYS IN THE VICINITY **PG. 121**

- The proposed deck and utility room is unlikely to increase the traffic on the roads and highways in the vicinity, thus not resulting in an adverse impact.

SECTION 5.4.B.4 – BYLAWS IN EFFECT **PG. 122**

- Staff is unaware of any violations or noncompliance issues pertaining to the property.
- The proposed deck and utility room will conform with the *Underhill Unified Land Use & Development Regulations* should they applicants get approval from the Board.

SECTION 5.4.B.5 – THE UTILIZATION OF RENEWABLE ENERGY RESOURCES **PG. 122**

- The proposed development is not anticipated to interfere with any sustainable use of renewable energy resources.

SECTION 5.4.C – SITE PLAN REVIEW STANDARDS **PG. 123**

- See analysis under Section 5.3 above.

SECTION 5.4.D – SPECIFIC STANDARDS *(The Board may consider the following subsections and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:)*

SECTION 5.4.D.1 – CONFORMANCE WITH THE TOWN PLAN **PG. 123**

- The proposed development is consistent with the Town Plan.

SECTION 5.4.D.2 – ZONING DISTRICT & USE STANDARDS **PG. 123**

- The proposed utility room will comply with the Rural Residential District dimensional and use standards should the Board grant conditional use approval under Section 5.5 below.

SECTION 5.4.D.3 – PERFORMANCE STANDARDS **PG. 123**

- See Section 3.14 above.

SECTION 5.4.D.4 – LEGAL DOCUMENTATION **PG. 123**

- Does not apply.

SECTION 5.5 – WAIVERS & VARIANCES

SECTION 5.5.A – APPLICATIONS & REVIEW STANDARDS

PG. 123

- The applicants have asked for a dimensional waiver to construct a deck and utility room.
- Other waivers may be granted by the Board as they see appropriate.
 - The Board may waive application requirements, and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to the application.

SECTION 5.5.B – DIMENSIONAL WAIVERS

SECTION 5.5.B.1 – WAIVER REQUEST RATIONALE

PG. 124

- The applicants have requested a waiver to construct a deck and utility room (see Exhibit H), which will serve the single-family dwelling.

SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST

PG. 124

- The Board may grant a waiver if one of the following is true:
 - To allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.
 - To allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.
 - Comply with federal or state public health, safety, access and disability standards.
 - Allow for the siting of renewable energy structures.
- Statement 1 and 2 above appear to be applicable.

SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS

PG. 124

- | | |
|---|---|
| <p>a. <i>Element 1</i> – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.</p> | <ul style="list-style-type: none">• When reviewing the submitted site plan (see Exhibits J, L & M), siting the utility room in an area that conforms to the setback requirements is unlikely due to several site constraints, such as an undersized lot and the proposed septic system, thereby inevitably encroaching upon the setback, thus requiring a waiver. |
| <p>b. <i>Element 2</i> – The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.</p> | <ul style="list-style-type: none">• Staff is unaware of any stated objectives and policies in the Town Plan where the construction of the proposed deck and utility room would be contrary. |
| <p>c. <i>Element 3</i> – The waiver represents the minimum setback reduction necessary to allow for the proposed development.</p> | <ul style="list-style-type: none">• The Board should explore if the applicants can site the utility room in the building envelope depicted in Exhibits J, L & M. |
| <p>d. <i>Element 4</i> – Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site</p> | <ul style="list-style-type: none">• The Board should evaluate if any mitigation measures are required as a result of the construction of the proposed deck. |

design, landscaping and screening, other
accepted mitigation measures.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

- No Special Flood Hazard Areas are depicted on the existing lot (source: ANR Website); therefore, review under this Article is not required.

APPENDIX A – ROAD & DRIVEWAY STANDARDS

- Since no modifications to the existing driveway and curb cut are proposed, review under the Road Ordinance is unnecessary – an access permit is therefore not being sought at the direction of Staff.